

## MINUTES OF THE PROCEEDINGS OF THE CITY COUNCIL

September 17, 2013

The minutes of the proceedings of a regular meeting of the City Council of the City of Coos Bay, Coos County, Oregon, held at 7 p.m. in the Council Chambers at City Hall, 500 Central Avenue, Coos Bay, Oregon.

### Those Attending

Those present were Mayor Crystal Shoji and Councilors Mark Daily, Jennifer Groth, Stephanie Kramer, Gene Melton, and Mike Vaughan. Councilor John Muenchrath was absent. City staff present were City Manager Rodger Craddock, City Attorney Nate McClintock, Finance Director Susanne Baker, Deputy Finance Director Amy Kinnaman, Library Director Sami Pierson, Community Development Director Eric Day, Public Works Director Jim Hossley, Acting Fire Chief Mark Anderson, Police Sergeant Mike Shaffer, and Police Chief Gary McCullough.

### Flag Salute

Mayor Shoji opened the meeting and asked Community Development Director Eric Day to lead the Council and assembly in the salute to the flag.

### Public Comments

John Hill, Coos Bay: advised he was the past President of the Coos Bay Chapter of the Vietnam Veterans of America; stated he helped to facilitate the placement of the war memorial; asked the Council to be resolute in the protection of veterans and their emotional states. Tom McKirgin, Coquille: requested the Council to pass the proposed resolution calling for the rejection of the National Defense Authorization Act (NDAA). Connie Martin, Coos Bay: spoke in favor of the Council passing the proposed resolution rejecting the NDAA. Rob Taylor, Bandon: stated he believed liberty was in threat; suggested the Council would face liability if they did not pass the proposed NDAA resolution. Ronnie Herne, Fairview: stated the Council took an oath to support the Constitution and the State of Oregon; requested the Council pass the proposed NDAA resolution. Ethel Petry, Coquille: stated she believed the Patriot Act and NDAA were not legal; referenced the Mingus Park Memorial and asked where the Constitution called for the separation of Church and State. Jeff Jefferies, Myrtle Point: spoke in support of the NDAA resolution. Jay Bell, Fairview: stated she hoped the Council was aware of the definition of an enemy combatant; stated it included people who believed in God, went to church, or didn't agree with certain parts of the federal government. Tressa Johnson, Remote: expressed support of prior remarks supporting the rejection of the NDAA. Mary Geddy, Coquille: suggested Americans were complacent and requested the Council to support the democratic process by passing the NDAA resolution.

### Consent Calendar

Mayor Shoji reviewed the consent calendar which consisted of 3a: approval of the minutes of September 3, 2013; 3b: acceptance of the August 2013 accounts payable and payroll check registers; and 3c: acceptance of the August 2013 combined cash report. Councilor Kramer moved to approve the consent calendar approving the minutes of September 3, 2013, accepting the August 2013 accounts payable and payroll check registers, and accepting the August 2013 combined cash report. Councilor Groth seconded the motion which carried with Mayor Shoji

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and Councilors Daily, Groth, Kramer, Melton, and Vaughan voting aye. Councilor Muenchrath was absent.

### **Public Hearing to Consider Regulating the Sale or Resale of Certain Used Merchandise and Licensing Secondhand Stores and Gem and Precious Metal Dealers, and Repealing Ordinance 279 – Approval Would Require Enactment of the Proposed Draft Ordinance**

City Manager Rodger Craddock stated for the past five months, staff had been working with Council to update Coos Bay Municipal Code (CBMC) 5.20, regulating secondhand stores and gem and precious metal dealers. After the August 6, 2013 Council meeting questions remained regarding the City's ability to include and regulate the sale of firearms and firearm dealers. Based on Oregon Revised Statutes (ORS) 166.174 and 166.75, the City was prohibited from regulating the sale of firearms from a business in the City unless the seller was operating a pawnshop or second hand store. Mr. Craddock explained a secondhand store was defined as a business whose primary source of revenue was through the sale of used merchandise. As such, the previously proposed draft ordinance was revised to be in compliance with ORS 166.174 and 166.175.

Mayor Shoji opened the public hearing. Dale Pennie, Bandon: suggested antique money should be added to the list of regulated property. Police Chief Gary McCullough confirmed antique money was not listed under the regulated property but would be reported through the digital imaging process. No further comments were given and the hearing was closed. Councilor Groth moved to enact the draft ordinance and repeal Ordinance No. 279. Councilor Melton seconded the motion. Deputy Finance Director Amy Kinnaman read the ordinance by title only and Ordinance No. 453 was enacted by the following vote:

Aye:	Mayor Shoji and Councilors Daily, Groth, Kramer, Melton, and Vaughan
Nay:	None
Absent:	Muenchrath

### **Public Hearing to Consider a Proposed Lease/Sale of City-Owned Real Property – Northwest Portion of Parking Lot TL 8300 South and Adjacent to 245 South 2<sup>nd</sup> Street**

Councilor Vaughan having rendered the concept drawing for the proposed rain garden was deemed to have a conflict of interest due to his involvement in the project.

City Manager Rodger Craddock stated on August 6, 2013, Council directed staff to negotiate a lease for the northwestern corner of TL8300 adjacent to and south of the building located at 245 South 2<sup>nd</sup> Street. The purpose of the lease was to allow installation of a rain garden, construction of an outdoor courtyard, and installation of an EV charging station. The property included in the proposed lease comprised of approximately 2,980 sq. ft., and included a sidewalk and seven parking stalls. Mr. Craddock reviewed with Council the tentative lease terms which City staff had negotiated with David Ford, principal of Ford Building LLC. The total value of the lease under the proposed terms was \$20,484 which was the estimated value of the property with improvements (sidewalk, landscaping areas, and asphalt parking spaces).

Pursuant to Oregon Revised Statute (ORS) 221.725 which regulated the sale and lease with the option to purchase City owned property staff proposed to lease the property to Mr. Ford with the

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option to purchase. Mr. Craddock advised the process to sell City owned property included the following: publishing a notice of the proposed sale in a newspaper of general circulation in the City; holding a public hearing concerning the sale prior to the sale; establishing a reason for the sale and future use of the property. Mr. Craddock stated during the August 6, 2013 Council meeting, the Council determined the City did not need the proposed parking spaces, and recommended use included a rain garden, construction of outdoor seating, and installation of an EV charging station.

Mayor Shoji opened the public hearing. No public comments were given and the hearing was closed. David Ford, Charleston: thanked the Council for their consideration. Jay Bell, Fairview: inquired if storm tax referred to a roof rain tax whereby Mr. Craddock stated the City did not have a roof rain tax. Ronnie Herne, Fairview: asked if the citizens of Coos Bay were aware the City was considering implementing a stormdrain fee. Mayor Shoji stated the City had no plans to implement stormwater fees. Mr. Craddock further clarified that Ford Building LLC had previously suggested the City would benefit from the installation of the rain garden and requested a stormwater credit on the lease. Since the City currently did not have stormwater fees, consideration of a stormwater credit was included in the lease. No further comments were given and the hearing was closed. Councilor Groth moved to direct staff to finalize and enter into a ten year lease with purchase option for the property with Ford Building LLC and to designate the specific use of revenue received for future development of parking in the downtown district. Councilor Melton seconded the motion which carried with Mayor Shoji and Councilors Daily, Groth, Kramer, and Melton voting aye. Councilor Muenchrath was absent. Councilor Vaughan abstained from the vote is deemed, pursuant to the provisions of 4.7.4 of the Rules of the City Council, to have voted with the majority, which approved the motion.

### **Approval of a Professional Service Agreement for a Franchise Contingency Fee Audit**

Finance Director Susanne Baker stated staff contacted several audit firms, cities, and references in effort to locate an auditing firm to perform a contingency fee audit of the City's franchise holders. Azavar Audit Solutions was the only firm identified that would perform the audit on the basis of a contingency fee. Ms. Baker explained a contingency fee audit was one in which the audit firm shares in the savings derived from the findings of their audit. If the franchise holders remitted the correct amount due, there would be no fee owed by the City nor does the audit firm receive revenue. Azavar Audit Solutions proposed to perform the audit based on an amount equal to 45% of any new revenues or prospective funds recovered per account or per Provider for forty-eight (48) months following when funds would be properly remitted. Councilor Kramer moved to authorize the City Manager to sign the professional services agreement with Azavar Audit Solutions to perform an audit of the City's franchise holders. Councilor Groth seconded the motion which carried with Mayor Shoji and Councilors Daily, Groth, Kramer, Melton, and Vaughan voting aye. Councilor Muenchrath was absent.

### **Request of a Resolution Against Provisions of the National Defense Authorization Act (NDAA)**

City Manager Rodger Craddock stated on August 6, 2013 several individuals made a presentation to the Council regarding their concerns over the constitutionality of the National Defense Authorization Act (NDAA) of 2012. They requested the City of Coos Bay to pass their proposed resolution which called for the repeal of the Act as well as prohibit the City from

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enforcing the Act within the City. Mr. Craddock provided the Council with the August 6<sup>th</sup> staff report and attachments including those provided by Citizen Tom McKirgan during the August 6<sup>th</sup> Council meeting. On August 20, 2013 the Council received an email with seven attachments from Mr. McKirgan requesting a work session with the Council. On September 12, 2013 the Council held the requested work session. Councilor Daily suggested the NDAA should proceed through the court system to allow the courts to determine if any violation was made; recommended rejecting the proposed resolution. Councilor Melton was in favor of supporting the proposed resolution if it did not hinder the Police Department from doing their jobs. City Attorney Nate McClintock stated that the one court that has ruled on Sections 1021 and 1022 of the NDAA, found that the law did not apply to U.S. citizens or resident aliens; expressed concern about a potential conflict for the Police Department if they refused to follow the law or cooperate with a federal agency in the event someone carrying out a terrorist act was neither a citizen nor resident alien. Mayor Shoji stated she was not in favor of the resolution. No action was taken.

### City Attorney's Report

City Attorney Nate McClintock advised the City Manager's evaluation was scheduled for October 15, 2013 and noted he would be requesting feedback from the Mayor and Council.

### City Manager's Report

City Manager Rodger Craddock provided the Council with an update on various projects including the Egyptian Theatre, Bayshore sidewalks, and the Coos Bay Library and noted staff was working on updating the City's investment policy. Public Works Director Jim Hossley noted the Empire Blvd project was scheduled to bid in April 2014; estimated end of summer 2014 for completion. Mr. Hossley advised progress on the relocation of Pump Station No. 4 located on 10<sup>th</sup> Street was stalled due to encountering contaminated soil on an easement property (non-city owned property); City was awaiting further direction from the Department of Environmental Quality (DEQ) as to how to proceed with the project.

### Council Comments

Councilor Daily commended the group supporting the National Defense Authorization Act; reminded everyone of the Fun Festival. Mayor Shoji expressed appreciation for City Manager Rodger Craddock's leadership and commitment.

### Adjourn

There being no further business to come before the Council, Mayor Shoji adjourned the meeting. The next regular Council meeting was scheduled for October 1, 2013 in the Council Chambers at City Hall.

Attest:   
Susanne Baker, City Recorder

  
Crystal Shoji, Mayor